

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

UNITED STATES OF AMERICA,) Criminal Case
) Nos. CR 07-00111
) and CR 08-00013
Plaintiff,) Date: 6/4/2009
) Time: 9:49 a.m.
vs.)
)
JOSHUA J.C. ULLOA,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS BEFORE

THE HONORABLE FRANCES TYDINGCO-GATEWOOD

Chief Judge

Sentencing

Proceedings recorded by digital recording, transcript produced by computer.

Veronica Flores Reilly, OCR
District Court of Guam

APPEARANCES

Appearing on behalf of plaintiff:

UNITED STATES ATTORNEY'S OFFICE

BY: ROSETTA SAN NICOLAS, AUSA

Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
Hagatna, Guam

Appearing on behalf of defendant:

THE VAN DE VELD LAW OFFICES

BY: CURTIS VAN DE VELD, ESQ.

Second Floor, Historical Building
123 Hernan Cortes Avenue
Hagatna, Guam

ALSO PRESENT:

Agent Thanh Churchin, DEA
Stephen Guilllott, U.S. Probation

Veronica Flores Reilly, OCR
District Court of Guam

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>GOVERNMENT</u>				
<u>WITNESS:</u>				
Agt. Thanh Churchin	20	24	27	31
MOTION:	Ms. San Nicolas	07	Granted	08
MOTION:	Ms. San Nicolas	10	Granted	10
<u>Government's</u>				
<u>Exhibit:</u>				
			<u>Marked</u>	
1-Photographs			27	

1 **Thursday, June 4, 2009; at 9:49 a.m.; Hagatna, Guam**

2 * * *

3 THE COURT: Criminal case number 07-00111 and
4 case number 08-00013; *United States of America versus Joshua*
5 *J.C. Ulloa*; sentencing.

6 Counsel, please state your appearances.

7 MS. SAN NICOLAS: Good morning, Your Honor,
8 Rosetta San Nicolas for the government. To my left is Special
9 Agent Thanh Churchin with the DEA.

10 THE COURT: Good morning, Agent Churchin and
11 Ms. San Nicolas.

12 MR. VAN DE VELD: Good morning, Your Honor,
13 Curtis Van de veld on behalf of the defendant, Joshua J.C.
14 Ulloa, who is seated to my immediate right.

15 THE COURT: Good morning, Mr. Van de veld. Did
16 you just get out of Superior Court?

17 MR. VAN DE VELD: Yes, Your Honor.

18 THE COURT: We ready to proceed to sentencing at
19 this time?

20 MR. VAN DE VELD: Your Honor, I would -- I've
21 reviewed the presentence report materials with Mr. Ulloa but
22 it has been several months since I last went over them with
23 him and I had hoped to get out to see him to refresh his
24 recollection about the sentencing materials but did not get a
25 chance to do so, and rather than take up minutes of the

1 court's time, I would like to ask for maybe a one-week
2 continuance to be able to refresh his recollection.

3 THE COURT: Well, Mr. Van de veld, this case has
4 been pending sentencing. I mean, why haven't you seen your
5 client prior to today and -- number one; and number two, why
6 haven't you filed a motion for continuance before your client
7 was brought here by the U.S. Marshals and before the agent
8 came here and before this court?

9 MR. VAN DE VELD: Because my staff miscalendared
10 the sentencing hearing instead of for the 5th, for the 9th,
11 and so I attempted to see him before the 9th.

12 THE COURT: Well, as I understand it, you have
13 filed no objections to the presentence report.

14 MR. VAN DE VELD: No objections. And I did
15 review the presentence report with him when it came out, which
16 was as far back as January, but it's been several months. I
17 wanted to make sure that he is comfortable and remembers.

18 THE COURT: Well, do you need twenty minutes to
19 go over this with him?

20 MR. VAN DE VELD: Ten minutes, Your Honor.

21 THE COURT: Ten minutes. All right. I'll give
22 you a ten-minute continuance, then and we'll proceed forward.

23 MR. VAN DE VELD: Thank you.

24 THE COURT: All right. Ten-minute recess.

25 (Recess taken.)

1 (Back on the record.)

2 THE COURT: Please be seated. Call back the
3 case, Gina.

4 THE CLERK: Criminal case 07-00111 and case
5 number 08-00013; *United States of America versus Joshua J.C.*
6 *Ulloa*.

7 Counsel, please state your appearance.

8 MS. SAN NICOLAS: Good morning, Your Honor,
9 Rosetta San Nicolas for the government. To my left is Special
10 Agent Thanh Churchin with DEA.

11 MR. VAN DE VELD: Morning, Your Honor, Curtis Van
12 de veld on behalf of the defendant, Joshua J.C. Ulloa, who is
13 to my immediate right.

14 THE COURT: Mr. Van de veld, did you have enough
15 time to refresh your client about the presentence report?

16 MR. VAN DE VELD: Yes, and to go over the few
17 changes that occurred in the intervening time because of the
18 continuances that have occurred in the case, some people
19 (inaudible) -- with that information.

20 THE COURT: All right. You ready to proceed at
21 this time?

22 MR. VAN DE VELD: We're ready to proceed, Your
23 Honor.

24 THE COURT: Make sure next time we don't -- I --
25 you know, the Court doesn't appreciate this last-minute

1 request for continuance. To me, it doesn't justify --

2 MR. VAN DE VELD: I understand. Thank you, Your
3 Honor.

4 THE COURT: Proceed at this time. Mr. Ulloa,
5 this is the time set for imposition of sentence upon you in
6 case number -- and you have two criminal cases. As will you
7 recall, you plead guilty to CR 7-111 and CR 8-13, or is that
8 CR 11?

9 MR. VAN DE VELD: It's --

10 THE COURT: 111.

11 MR. VAN DE VELD: It's 08-111.

12 THE COURT: Okay, that's right. So CR 111.
13 CR 7-111 and CR 8-13. On March 11, 2008, you appeared before
14 the Court and entered a guilty plea to drug user in possession
15 of firearm, and the second indictment you pled to was
16 conspiracy to manufacture methamphetamine. The Court has
17 reviewed the presentence report and plea agreement --
18 agreements, and the Court has accepted your guilty plea and
19 adjudicates you guilty of these charges. As I understand it,
20 the United States attorney has no objections to the
21 presentence report; is that correct?

22 MS. SAN NICOLAS: No, Your Honor. And also for
23 the record, we would at this time move to have both of these
24 cases unsealed, 07-00111 as well as 08-00013, and we have no
25 objection to the PSR.

1 THE COURT: Al right. No objections to the PSR.
2 Do you have any objections? As I see it, you have none.

3 MR. VAN DE VELD: We have no objections to the
4 PSR. My understanding is the government tends to move the
5 Court for an additional one level decrease in the offense
6 level based upon acceptance of responsibility.

7 THE COURT: All right. Well, okay, that's -- she
8 can make her motion in a while, but with regard to objections,
9 there are none?

10 MR. VAN DE VELD: There are no objections, Your
11 Honor.

12 THE COURT: All right. Very well. No
13 objections. The Court will unseal all the matters in this
14 case so that everything regarding the first charge and -- I'm
15 sorry, Count 1, and count -- well, both Counts 1 in the
16 separate indictments are now public record.

17 Mr. Van de veld, now you've indicated to the
18 Court that you had an opportunity to review the presentence
19 report with your client a couple months ago and you have now
20 refreshed your memory and his memory on some matters of the
21 court.

22 And I would like to ask Mr. Ulloa, is that your
23 understanding that you had an opportunity to review the
24 presentence report with your attorney.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you discussed earlier today prior
2 to sentencing any concerns that your attorney may have with
3 regard to refreshing your memory and his memory about the
4 presentence report?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. And are you ready to
7 proceed at this time?

8 THE DEFENDANT: (Inaudible.)

9 THE COURT: Mr. Van de veld, you are ready as
10 well?

11 MR. VAN DE VELD: That is correct, Your Honor.

12 THE COURT: Okay. Mr. Guillliott, our chief
13 probation officer -- or I'm sorry, probation officer, can you
14 explain to us the calculations on the sentencing exposure
15 range for Mr. Ulloa?

16 PROBATION OFFICER: Good morning, Your Honor.

17 THE COURT: Good morning.

18 PROBATION OFFICER: Each separate case was put in
19 separate groups. Case number 07-111 was put into Group 1.
20 That's the fire -- drug user in possession of firearm. The
21 base offense level of that offense is 14, and there's no other
22 adjustments. So the adjusted level for Group 1 is 14. Group
23 2 consists of case number 08-13, conspiracy to manufacture
24 methamphetamine. The base offense level for that offense is
25 16. Defendant's base level is increased to a level 30, since

1 the manufacture of methamphetamine created a substantial risk
2 of harm to the five minors involved in this case. The
3 adjusted offense level is 30.

4 THE COURT: And the five minors include three of
5 his own children?

6 PROBATION OFFICER: Correct, Your Honor.

7 THE COURT: Okay.

8 PROBATION OFFICER: There is no increase in the
9 base offense level since group -- the highest offense level,
10 which is Group 2, is more than nine levels less serious than
11 Group 1. The highest of the adjusted offense level is 30.
12 The combined adjusted offense level is 30. The defendant
13 currently receives a two level decrease for acceptance of
14 responsibility.

15 And does the government want a motion at this
16 time to -- for the additional one level decrease?

17 MS. SAN NICOLAS: Yes, Your Honor. Your Honor,
18 at this time, we move for a one level decrease pursuant to
19 3E1.1 of the sentencing guidelines.

20 THE COURT: And so instead of being an offense
21 level of 28, it will now be 27?

22 PROBATION OFFICER: Yes, Your Honor.

23 THE COURT: So the defendant will face how many
24 months of imprisonment?

25 PROBATION OFFICER: For a total offense level of

1 27 and a criminal history category of 3, for case number
2 07-111, he has a statutory imprisonment range of ten years, a
3 guideline imprisonment range of 87 to 108 months. The
4 statutory penalties for 08-13 is a 5-year minimum to 40-year
5 maximum sentence and a guideline imprisonment range of 87 to
6 108 months. The guideline fine range for both offenses is
7 \$12,500 to \$125,000. The recommended sentence in this case is
8 97 months imprisonment, three years supervised release in case
9 number 07-111 and 97 months imprisonment and four years
10 supervised release in case number 08-13. Both cases shall be
11 served concurrently.

12 THE COURT: And then the criminal history
13 category, can you explain that?

14 PROBATION OFFICER: He has a criminal history
15 category of 3, Your Honor.

16 THE COURT: Mm-hmm. And the reason? Can you
17 just explain his criminal past?

18 PROBATION OFFICER: Yes. He has adult criminal
19 convictions dating back from October 14, 1999. He has a DUI
20 for that offense, which he received three criminal history
21 points. He has another DUI case on Guam --

22 THE COURT: I'm sorry, the first DUI case, this
23 is the one where he was convicted in Louisiana?

24 PROBATION OFFICER: Yes, Your Honor. He pled
25 guilty, sentenced to six months probation, two days in jail;

1 he had absconded and a warrant of arrest was issued in that
2 case.

3 THE COURT: And so it was this case while he was
4 on -- while his warrant was active because he absconded that
5 he committed these other crimes?

6 PROBATION OFFICER: Yes.

7 THE COURT: That are before the Court?

8 PROBATION OFFICER: Yes; correct.

9 THE COURT: And that's why his criminal history
10 category is higher?

11 PROBATION OFFICER: Yes; by two points.

12 THE COURT: Okay.

13 PROBATION OFFICER: Then he receives additional
14 criminal history category points for a DUI case in December
15 17, 2003. He has a total criminal history category of 3 for
16 the four criminal history points.

17 THE COURT: All right. So the defendant then has
18 a criminal history category of 3?

19 PROBATION OFFICER: Yes, Your Honor.

20 THE COURT: You're indicating, because of his two
21 priors?

22 PROBATION OFFICER: Yes, Your Honor.

23 THE COURT: Then he also has pending cases now.

24 PROBATION OFFICER: Yes, yes.

25 THE COURT: With the Superior Court of Guam?

1 PROBATION OFFICER: Yes.

2 THE COURT: Okay. And can you tell us how many
3 pending cases does he have?

4 PROBATION OFFICER: He has one forgery case, the
5 child abuse case; those are the two pending cases.

6 THE COURT: The child abuse case is the one that
7 -- it's part of this case, right?

8 PROBATION OFFICER: Yes, Your Honor.

9 THE COURT: So it's part of the -- when the
10 police raided the home and then they found the children --

11 PROBATION OFFICER: Yes.

12 THE COURT: -- sleeping and there were drug
13 activities going on?

14 PROBATION OFFICER: Correct.

15 THE COURT: Forgery, child abuse. What else?

16 PROBATION OFFICER: Then he has other criminal
17 conduct: a robbery case that was dismissed, and then other
18 arrests, a terrorizing case in June of 2002 and a
19 manufacturing of marijuana in 2003, but prosecution was
20 declined in both cases.

21 THE COURT: Okay. So he has three cases that
22 essentially are the prosecution has been declined or the case
23 has been dismissed?

24 PROBATION OFFICER: Yes, Your Honor.

25 THE COURT: But there's two pending cases now?

1 PROBATION OFFICER: Yes, Your Honor.

2 THE COURT: And he has two priors?

3 PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: All right. And why are you
5 recommending 97 months from probation?

6 PROBATION OFFICER: Eighty-seven months.

7 THE COURT: Oh, you said 97. You meant 87? You
8 initially said -- I think you wanted 97 because that was the
9 original --

10 PROBATION OFFICER: Yes, yes. That was -- they
11 were before the application of 3E1.1(b). Yeah, I recommend
12 the minimum at offense level 28, so the minimum at offense
13 level 27 is 87.

14 THE COURT: Okay, so you're recommending 87
15 months as opposed to 97. And your reason for 87 months is?

16 PROBATION OFFICER: In comparison to his
17 co-defendants, this defendant is more culpable. His
18 co-defendant, Christine Duenas, received 57 months; Jonathan
19 Ninete received 71 months. So --

20 THE COURT: Christine Duenas is the mother of the
21 children? His three children?

22 PROBATION OFFICER: I believe. And his former
23 girlfriend.

24 THE COURT: Okay. And former girlfriend? And so
25 she has received 57 months. Jonathan Ninete, who I also

1 sentenced, received what, 71 months?

2 PROBATION OFFICER: Seventy-one months; yes.

3 THE COURT: And then Vanessa Tenorio and
4 Christopher Grantham and Kelly Francisco's case have not been
5 sentenced?

6 PROBATION OFFICER: Correct.

7 THE COURT: And then Johnnie Fortner, from a
8 different raid, had received six months?

9 PROBATION OFFICER: Right; as it relates --

10 THE COURT: All right. Very well. All right.
11 Any other reason?

12 PROBATION OFFICER: No, Your Honor.

13 THE COURT: Can I hear from the prosecution then.
14 Ms. San Nicolas, if you can come up to the podium. Your
15 recommendation --

16 MS. SAN NICOLAS: Thank you, Your Honor.

17 THE COURT: -- for this defendant's sentence.
18 First of all, do you agree with the calculations as enunciated
19 by the U.S. Probation Office?

20 MS. SAN NICOLAS: Agree, Your Honor.

21 THE COURT: All right.

22 MS. SAN NICOLAS: Agree to all the calculations.

23 THE COURT: So you agree that the defendant right
24 now, under the sentencing guidelines, faces 87 months to 108
25 months sentence?

1 MS. SAN NICOLAS: Yes, we do agree, Your Honor.
2 Level 27 criminal history category 3, Your Honor.

3 THE COURT: You may proceed.

4 MS. SAN NICOLAS: Your Honor, at this time, the
5 government recommends the defendant receive 96 months. The
6 range is 87 to 108. This is approximately seven years and
7 three months to nine years. The government believes that 96
8 months would be appropriate for this defendant. The reason,
9 Your Honor, is because we have two cases: We have the first
10 case is the defendant is a drug user in possession of a
11 firearm. And as this court is very familiar, this incident
12 arose out of a traffic pullover of the defendant in the Dairy
13 Road area, Dairy Road in Mangilao. The defendant was a driver
14 of the vehicle; this was a Mazda Miyata. The passengers were
15 Johnnie Fortner and Christine Duenas. We would note, Your
16 Honor, that the defendant has received leniency and has not
17 been prosecuted for that offense; however, he must contend
18 with the present case that involves the second incident of a
19 violation of 21 U.S.C. 841 --

20 THE COURT: And why the United States Attorney's
21 has decided not to prosecute him for the other offense [sic]?

22 MS. SAN NICOLAS: Your Honor, this defendant,
23 when he was arrested in 2007, initially agreed to cooperate
24 and the Court released the defendant. After he was
25 cooperating, he ended up getting in more trouble. We found

1 out later that his activity had continued. Specifically, he
2 was seen at the -- he was seen purchasing materials that
3 related to the production of methamphetamine. He was also,
4 Your Honor, pursuant to the logs at the pharmacies, had
5 actually purchased methamphetamine. The officers were -- had
6 wind of the activities and were looking for Christopher
7 Grantham at the Consolacion Street, Asan residence, entered
8 the home, the defendant answered the door, along with
9 Christine Duenas, and in that home they found Christopher
10 Grantham, Jonathan Ninete and the children, to include the
11 defendant's three children, the -- his biological children,
12 the remaining two children and a 17-year-old minor. He was
13 given an opportunity to reduce that sentence and that did not
14 pan out. He continued with his criminal lifestyle.

15 Your Honor, we requested that the Court sentence
16 the defendant to the mid-range still within the applicable
17 guidelines of 96 months. This facts and circumstances are
18 that this defendant had the firearm in his home above the
19 refrigerator. When he did inform the police that he had the
20 firearm, the police searched and found the firearm was hidden
21 outside by the co-defendant, Jonathan Ninete. They also noted
22 when they entered the home the strong odor of chemical
23 substances and learned that this was the place that a
24 methamphetamine lab was -- methamphetamine was being produced.

25 So we have a gun with bullets, we have six

1 children in a home and we have the manufacturing
2 methamphetamine as the nature and circumstances. Also, Your
3 Honor, this court must render a decision that reflects the
4 seriousness of the offense and we believe that a stiff penalty
5 of 96 months would reflect that there is no tolerance for
6 manufacturing methamphetamine and certainly while children are
7 in the home.

8 Another goal is to deter this type of criminal
9 behavior. This court is familiar with methamphetamine and the
10 risk of production. There is a risk of explosion, inhalation,
11 toxins and poisons. Also, Your Honor, the Court must protect
12 the public from further crimes and this defendant must account
13 for his continued criminal behavior by buying the
14 pseudoephedrine and being spotted at the pool store purchasing
15 PH strips.

16 Your Honor, this defendant will not languish in
17 jail. He will receive -- he can receive the benefit of drug
18 counseling, he can receive educational opportunities that may
19 not have been available to him. And so, Your Honor, we ask
20 that this defendant receive the 96 months. An additional
21 reason is, Your Honor, he was committing his home, the home
22 that was given to him from the community, from GHURA, to be
23 used for manufacturing methamphetamine. And the fee for
24 letting his home be used was he would get a cut of the
25 methamphetamine that was produced. This is certainly a

1 defendant that (incomprehensible) a 96 months term of
2 incarceration and we recommend that he receive 96 months of
3 incarceration. The co-defendants have received different
4 sentences for obviously different reasons. Christine Duenas,
5 sentence of 57 months, is approximately 4.8 years in jail;
6 co-defendant Jonathan Ninete received a 71-month imprisonment.
7 Sentence was also enhanced because of the danger that this
8 action produced to the children that were in the home ranging
9 in ages from one to nine and then a 17-year-old minor who is
10 the girlfriend of Jonathan Ninete. As the Court has noted,
11 Vanessa Tenorio's sentencing is pending. Also Christopher
12 Grantham's sentencing is pending; Kelly Francisco's sentencing
13 is scheduled for July 14, 2009.

14 Your Honor, we request the defendant receive a 96
15 month term of incarceration. If the Court has any questions,
16 Special Agent Thanh Churchin can clarify for the record, if
17 the Court wishes, the location of the chemicals that were
18 found in the home, the existence of a burn pile, as well as
19 any other facts pertaining to either the arrest of the
20 defendant in 2007 and the discovery of the clandestine
21 methamphetamine lab at his home. We submit, Your Honor.
22 Thank you.

23 THE COURT: All right. Why don't you have Agent
24 Churchin take the stand and you can ask him those questions,
25 Ms. San Nicolas. Agent Churchin, if you can be sworn in by

1 the clerk.

2 THANH CHURCHIN,
3 called as a witness on behalf of the plaintiff, having first
4 been duly sworn, was examined and testified as follows:

5 THE CLERK: State your full name. Spell your
6 last name for the record.

7 THE WITNESS: Thanh Churchin. Last name is
8 C-H-U-R-C-H-I-N.

9
10 DIRECT EXAMINATION

11 BY MS. SAN NICOLAS:

12 Q. Good morning, Special Agent Churchin. Can you tell
13 us where you work?

14 A. I work with the Drug Enforcement Administration here
15 on Guam.

16 Q. And how long have you been on Guam?

17 A. Approximately two and a half years.

18 Q. All right. And how much total experience do you have
19 with DEA?

20 A. Approximately fourteen years.

21 Q. Now, sir, I'd like to call your attention to a
22 residence that was the 26 Consolacion Street. Are you
23 familiar with that residence?

24 A. Yes, ma'am, I am.

25 Q. Okay. And this is a residence of the defendant,

1 Joshua Ulloa and Christine Duenas; correct?

2 A. That's correct.

3 Q. Now, did you have an opportunity to actually go to
4 the residence on January 7, 2008?

5 A. Yes, ma'am, I did.

6 Q. Can you describe the residence?

7 A. It's a concrete house, looked like it was fairly
8 maintained. There was approximately four bedrooms upstairs
9 and it's in the, I guess, Asan -- Asan area.

10 Q. Okay. Now, when you entered the home, can you tell
11 us what was the manner that items were stored in the home,
12 items pertaining to the manufacturing of methamphetamine?

13 A. Our purpose going to that house when we were there on
14 that particular day would be execute a federal search warrant
15 at location. During the search of the residence, we found
16 various chemicals downstairs in the bathroom and also in the
17 kitchen and we also found other materials upstairs in the
18 bedrooms, and also items relating to the manufacture of
19 crystal methamphetamine in the backyard.

20 Q. Can you give us an example of some of the items
21 related to the manufacturing of crystal methamphetamine?

22 A. Some of the ingredients that you would need to
23 process crystal methamphetamine would be like acetone,
24 Denatured alcohol, red phosphorous, which is obtained from a
25 matchbox strikers plate, iodine crystal would be -- get from

1 iodine tincture bottle, which were found in the master bedroom
2 at the residence.

3 Q. Okay. And are these items combined together and then
4 heated?

5 A. Yes, they're combined together and then to
6 manufacture -- once you extract the items that are needed,
7 which is iodine crystal, red phosphorous and pseudoephedrine,
8 these items are combined to manufacture crystal
9 methamphetamine.

10 Q. Now, was a -- was red phosphorous found in the home?

11 A. There was a gallon milk jug container that was in the
12 downstairs bathroom that was tested and I believe one of the
13 milk gallons tested positive for iodine, and I believe one of
14 the container was also for red-p, red phosphorous.

15 Q. And are these the ingredients that are used to
16 manufacture methamphetamine?

17 A. Yes, ma'am, they are.

18 Q. Can you, for the record, tell us if there were minors
19 in the home?

20 A. Upon executions of search warrants there, we
21 encountered children ranging from the age of one to ten and
22 also a minor female of seventeen years old. Mr. Jonathan
23 Ninete was at the residence, Christine Duenas also was there
24 and Joshua Ulloa, and also previously Mr. Christopher Grantham
25 was arrested from the residence.

1 Q. Now, how are other chemicals and other substances
2 stored? Can you tell us the manner how they were stored?

3 A. They were just underneath the bathroom cabinet or
4 kitchen sink cabinet. In the bedroom, they were just sitting
5 on the floor. The iodine tincture was in the closet on top of
6 the shelf, and then in Ninete's bedroom, they were underneath
7 the bed or in a corner of the bedroom.

8 Q. Were any of the items locked in any kind of storage
9 containers?

10 A. Not to my knowledge.

11 Q. Now, when you -- toward the home, did you have an
12 opportunity to see how there was -- how these items were
13 disposed of? Maybe any of the residue or?

14 A. There's a burnt trash pile in the backyard and the
15 items that were used to manufacture were actually being burnt
16 or disposed of in the trash pile.

17 Q. And how long did this manufacturing operation remain
18 in existence?

19 A. From -- based on my investigation, I think they just
20 started up in December of 2007.

21 Q. Until around January?

22 A. Till January, the 7th of 2008.

23 Q. Now, were there neighbors in the area?

24 A. Yes, ma'am.

25 Q. Okay. Can you tell us if the house was near a

1 street?

2 A. Yes. It's on a...

3 Q. Was the home in a housing area?

4 A. Yes, it is.

5 Q. And this would be the GHURA housing area?

6 A. I'm not sure -- I know it's GHURA housing but I don't
7 know if the other houses in the neighborhood are GHURA
8 housing.

9 Q. Was there an indication that these containers in the
10 burn pile were actually burned?

11 A. Yes.

12 (Pause.)

13 MS. SAN NICOLAS: Your Honor, we have no further
14 questions for this witness.

15 THE COURT: All right. Any questions?

16 MR. VAN DE VELD: I do, Your Honor.

17 THE COURT: All right. You may proceed.

18 Cross-examine. Podium, please.

19 CROSS-EXAMINATION

20 BY MR. VAN DE VELD:

21 Q. Agent Churchin, you said you believed that there was
22 red phosphorous material; is it your recollection that is
23 vague that makes you so uncertain?

24 A. I would have to review the reports of stuff that were
25 seized from the location. I do remember that there was a

1 gallon milk jug container that contained -- it was tested and
2 tested positive for iodine. There was also another container
3 that tested positive for meth.

4 Q. I understand that, Officer Churchin, but I was
5 specifically asking you about the red phosphorous portion. I
6 wasn't asking you about the iodine. You said you -- in your
7 response when you were asked by Ms. San Nicolas, you said you
8 believe that there was a container containing red phosphorous
9 but you were -- in making your answer, it seemed as if you
10 were uncertain. And I'm asking --

11 THE COURT: Counselor, just ask the question.
12 You don't have to --

13 MR. VAN DE VELD: I'm asking you --

14 THE COURT: Ask a specific question instead of
15 arguing with the witness; just ask him. I mean, if he can't
16 answer it, you know, get right to it.

17 Q. BY MR. VAN DE VELD: (Continuing) Are you uncertain of
18 that recollection?

19 A. I believe it was -- I think we have a report here
20 with the lab reports, and if I look back and tell you for
21 sure.

22 Q. So as you sit there right now, you are uncertain; is
23 that correct?

24 A. Yes, I am uncertain, but I know that --

25 Q. Thank you.

1 A. Okay.

2 Q. Now, is there anything that you've testified to about
3 today that you didn't know prior to the arrest of the
4 defendant?

5 A. I don't know what you're asking me, sir.

6 Q. Well, all of the information that you've testified to
7 about today --

8 A. Yes.

9 Q. -- was it known to you by the time the defendant was
10 brought into court and charged in this case?

11 A. Yes.

12 Q. Okay. So there's nothing that you learned after he
13 was charged that leads to your responses today; is that
14 correct?

15 A. That's correct.

16 MR. VAN DE VELD: I have no further questions,
17 Your Honor. I do have an objection to the government's
18 recommendation and --

19 THE COURT: Okay, we'll get to that in a second.
20 But with regards to the witness, no further questions?

21 MR. VAN DE VELD: I have no further questions of
22 th witness.

23 THE COURT: All right. We'll hold on a second.
24 You may step down.

25 Oh. Do you have any redirect?

1 THE WITNESS: Yes.

2 MS. SAN NICOLAS: If I could, Your Honor.

3 THE COURT: All right. If you're marking
4 something, have it marked first, Ms. San Nicolas.

5 MS. SAN NICOLAS: Yes, Your Honor.

6 THE COURT: This will be marked as Prosecution
7 Exhibit 1. Is it just one exhibit or two exhibits? So it's
8 one exhibit? Exhibit 1.

9 MR. VAN DE VELD: Yes, Your Honor. It already
10 has the No. 8 on it.

11 (Exhibit 1 marked: Photograph.)

12 THE COURT: It will be 1. We'll make it proper.
13 Exhibit 1, for sentencing purposes. All right.

14 REDIRECT EXAMINATION

15 BY MS. SAN NICOLAS:

16 Q. Special Agent, could you -- you stated that you would
17 need to refresh your recollection about the red jug and the
18 clear jug?

19 A. That's correct.

20 Q. Do you have your report in front of you?

21 A. Uh --

22 MR. VAN DE VELD: Your Honor, if the witness is
23 going to be reviewing something other than the exhibits, then
24 I'm entitled to know exactly what it is.

25 THE COURT: All right. What are you doing,

1 agent?

2 MR. VAN DE VELD: He was directed by the question
3 only to look at the exhibits.

4 THE WITNESS: I was asked about the reports. I
5 was just looking at the lab reports, Your Honor.

6 THE COURT: All right. Do you have copies of
7 those reports, Mr. Van de veld?

8 MR. VAN DE VELD: Which page is the government
9 discovery he's referring to?

10 THE COURT: All right. Which page of discovery?

11 THE WITNESS: This is -- I don't know if this is
12 part of discovery, Your Honor, but this is the lab report that
13 I received from the lab which I gave to counsel and I believe
14 it was forwarded to Mr. Curtis.

15 THE COURT: Did you get copies of the lab reports
16 as to what the results were? If not, you can look at them.

17 MR. VAN DE VELD: I've received a CD-ROM.

18 THE COURT: All right.

19 MR. VAN DE VELD: (Inaudible.) I don't have the
20 ability to look -- (inaudible).

21 THE COURT: All right. Let him look at that
22 briefly then, Mrs. San Nicolas. He wants to review the lab
23 reports.

24 MR. VAN DE VELD: He's looking at it in his file.
25 May I step forward to the witness, Your Honor?

1 THE COURT: Witness? No, no. Gina, give him --
2 get the reports and let counsel see it.

3 (Pause for counsel to review.)

4 THE COURT: All right. Did you have an
5 opportunity to review those?

6 MR. VAN DE VELD: Yes, Your Honor. I'm prepared
7 to stipulate that the content of Exhibit 1, the bottom
8 picture, is indicated to be iodine and the report indicates
9 that Exhibit 31 is a noncontrolled substance but doesn't
10 indicate what exactly is the fluid contained within Exhibit
11 31.

12 THE COURT: All right. You made proceed, Ms. San
13 Nicolas. Go ahead. And if you wish to engage in that
14 stipulation, let me know but go ahead and proceed.

15 MS. SAN NICOLAS: Your Honor, the -- we do not.
16 I believe this has been incorrectly identified by defense.

17 THE COURT: All right. Go ahead.

18 MS. SAN NICOLAS: -- resolved by a quick
19 question.

20 THE COURT: All right.

21 Q. BY MS. SAN NICOLAS: (Continuing) Special Agent
22 Churchin, have you had an opportunity to review the lab
23 results in this case?

24 A. Yes, I have.

25 Q. Now, before you -- now, is your recollection

1 refreshed?

2 A. Yes, it is.

3 Q. Before you is what has been labelled Government's
4 Exhibit 1 in evidence. Do you have that document?

5 A. Yes, it's Exhibit 31, Exhibit 32 and Government's
6 Exhibit 1.

7 Q. Now, you're referring to the number that's been
8 written on a whiteout board when you're getting the 31 and 32?

9 A. That's correct.

10 Q. Now, with regard to the reddish-color gallon, what
11 was in that gallon?

12 A. The reddish gallon is marked as Exhibit 32, that is
13 iodine.

14 Q. And this was a result of sending the contents to a
15 lab?

16 A. Yes, that's correct.

17 Q. Now, as far as the first gallon, the clear gallon,
18 what was inside that gallon?

19 A. The clear gallon was marked as Exhibit 31. The lab
20 separated into two substances: One substance tested for no
21 controlled substance and the other was tested for red -- trace
22 amount of methamphetamine.

23 Q. Now, where were these gallons found?

24 A. These gallons were found, I believe, underneath the
25 downstairs bathroom.

1 Q. And, to clarify, these were not all of the items that
2 were found; is that correct?

3 A. No.

4 Q. So there were other -- is it correct to say there
5 were other precursors or materials used in the manufacturing
6 of methamphetamine?

7 A. Yes, that's correct.

8 MS. SAN NICOLAS: No further questions, Your
9 Honor.

10 THE COURT: All right. Very well. Anything
11 further?

12 MR. VAN DE VELD: Just one question.

13 RECROSS-EXAMINATION

14 BY MR. VAN DE VELD:

15 Q. Agent Churchin, again, everything that you testified
16 to about today you had knowledge of prior to Mr. Ulloa having
17 been charged; is that correct?

18 A. That's correct, sir.

19 MR. VAN DE VELD: Thank you. Nothing further.

20 THE COURT: You may step down. Let me just ask
21 you as well, Agent Churchin, before you step down: The United
22 States attorney is recommending 97 months imprisonment for
23 Mr. Ulloa; what is your position on that based on the
24 investigation of this case you have conducted?

25 THE WITNESS: Your Honor, I would agree with U.S.

1 Attorney's Office on the sole part that when we came in
2 contact with Mr. Ulloa back in October, he was given an
3 opportunity to cooperate with us, which he actually -- he
4 decided, yes, he wanted to cooperate; we maintained contact
5 with him briefly and then we -- he stopped contacting us. And
6 the next thing we know, he was back to assisting with the
7 manufacturing of crystal methamphetamine around December at
8 this residence.

9 THE COURT: All right. Thank you. You may step
10 down. All right. May I have Mr. Van de veld, you and your
11 client can come up. Did you wish to make any arguments and
12 make a statement to the Court and then did your client wish to
13 make a statement to the Court before I pronounce sentence?

14 MR. VAN DE VELD: Yes, Your Honor, and I do have
15 an objection. And Your Honor indicated the government
16 recommended 97 --

17 THE COURT: I'm sorry, 87 -- or 96. Excuse me;
18 96 months, that's right.

19 MR. VAN DE VELD: Yes. The probation officer has
20 recommended 87 months, but the government, by its
21 recommendation, if Your Honor would please take a look at the
22 plea agreement in this case, page 3, lines 17 through 20,
23 paragraph number 5(a).

24 THE COURT: Okay. Hold on one second. Let me
25 get the plea agreement.

1 (Pause.)

2 All right. Go ahead. What -- I've got it.

3 MR. VAN DE VELD: Page 3, Your Honor.

4 THE COURT: Page 3, on which one?

5 MR. VAN DE VELD: Lines 18 through 20.

6 THE COURT: This is 08 --

7 MR. VAN DE VELD: Located at paragraph 5(a).

8 THE COURT: Which plea agreement? There are two.

9 08-13?

10 MR. VAN DE VELD: 07-00111.

11 THE COURT: 07-111, page 3. Lines what?

12 MR. VAN DE VELD: Lines 18 through 20.

13 THE COURT: Okay. And then let's look at CR

14 8-13. I'm looking at the same thing, line -- page 3? Page 3,

15 lines 19 through 21. Okay. The Court has reviewed that.

16 Ms. San Nicolas, what's your position on this?

17 MS. SAN NICOLAS: Your Honor, as the document

18 states, the government agreed to recommend either the

19 statutory minimum, which in the case of the drug offense is

20 five to forty, or in the case of the felon -- the drug user in

21 possession of a firearm, which is ten years, we agreed to

22 recommend the statutory minimum or the minimum term of

23 incarceration recommended by the sentencing guidelines,

24 whichever is greater, leaving the government open to ask for a

25 mid-range of the sentencing guidelines.

1 MR. VAN DE VELD: And that's not correct, Your
2 Honor, because the statutory minimum is voided by the fact
3 this is his first felony conviction in district court, and
4 therefore, under the provisions of Section 3553(e), as the
5 presentence report indicates, the Court is freed from the
6 statutory maximum -- I mean, statutory minimum. So that's why
7 it is the sentencing recommendation is 87 months. And so
8 having been freed from the statutory minimum, the greater is
9 the guideline, and therefore, the recommendation should be
10 consistent with the minimum end of the guideline range, which
11 is what he was promised in his plea agreement.

12 THE COURT: I'm sorry, I don't -- I'm not sure if
13 I follow that. The plea agreement says that the prosecutor
14 has to recommend the statutory minimum. So let's --

15 Ms. San Nicolas, on the statutory minimum for
16 7-111, you can either recommend that statutory minimum, which
17 is not more than five years? No, I'm sorry. Ten years.

18 MS. SAN NICOLAS: Ten years incarceration.

19 THE COURT: Ten years maximum. That's ten years
20 maximum, isn't it? CR7-111?

21 MR. VAN DE VELD: But Your Honor, that would only
22 be if it actually applies.

23 THE COURT: Wait. Let me just talk to the
24 prosecutor first.

25 Ms. San Nicolas?

1 MS. SAN NICOLAS: It's ten years maximum, Your
2 Honor.

3 THE COURT: And what is the statutory minimum?

4 MS. SAN NICOLAS: If I may have a moment?

5 THE COURT: Yeah. Because the recommendation is
6 statutory minimum or the minimum term of incarceration
7 recommended by the sentencing guidelines.

8 Let me have Mr. Guilliot. Go ahead.

9 PROBATION OFFICER: Your Honor, there's no
10 statutory minimum for the firearm.

11 THE COURT: There are none. Okay. So there's
12 only a statutory maximum?

13 PROBATION OFFICER: Correct.

14 THE COURT: Of ten years, right?

15 PROBATION OFFICER: Yes.

16 THE COURT: And then under CR 8-13, there's a
17 minimum term.

18 PROBATION OFFICER: It's five years.

19 THE COURT: Five years minimum. So you got that,
20 and then forty years maximum, right?

21 PROBATION OFFICER: Yes.

22 THE COURT: Now -- and the minimum term of
23 incarceration is, according to what you have told us, is 87
24 months. That's the minimum term?

25 PROBATION OFFICER: Yes, which exceeds the five

1 years for minimum.

2 THE COURT: So the question is -- okay, Ms. San
3 Nicolas, do you understand that now, on the --

4 MS. SAN NICOLAS: I do, Your Honor, and would --
5 I modify my request, Your Honor. Request for 87.

6 THE COURT: Okay.

7 MS. SAN NICOLAS: Eighty-seven months.

8 THE COURT: So -- I'm sorry. So consistent with
9 what you have entered a guilty plea to, you believe that based
10 on that particular paragraph 5, that the minimum term of
11 incarceration recommended by the sentencing guidelines, which
12 is greater than the minimum term of the statutory requirement,
13 would be what you're recommending, which is 87 months?

14 MS. SAN NICOLAS: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. SAN NICOLAS: And -- thank you, Your Honor.

17 THE COURT: All right. You may proceed. She's
18 conceded that.

19 MR. VAN DE VELD: Thank you, Your Honor. The
20 recommendation of Probation, I think, takes into consideration
21 all of the aspects of what the government was concerned about
22 and what the probation officer has mentioned --

23 THE COURT: Bring the mic a little closer to you,
24 Mr. -- thank you, Mr. Van de veld.

25 MR. VAN DE VELD: I'm sorry. I normally speak

1 fairly loudly. The concerns that the government has and that
2 the Court should have concerning appropriately punishing the
3 defendant are considered by the sentencing guidelines, and
4 particularly because the offense level was increased from
5 sixteen to thirty. There was a fourteen level increase in the
6 sentencing offense level based upon the fact of -- that the
7 guidelines takes into consideration the concerns that have
8 been addressed. So -- and of course, he has had the increase
9 relative to his convictions in the criminal history category,
10 having shifted from criminal history category 1 to criminal
11 history category 3. So all of the concerns that have been
12 mentioned are taken into consideration by either the increase
13 in the offense level or the increase in the criminal history
14 category. I believe that the sentencing guidelines adequately
15 addresses all of the concerns in making its recommendation to
16 the Court. The defendant, therefore, has a sentencing
17 guidelines recommendation to the Court from -- which actually
18 exceeds the punishment which has been given to other persons
19 involved in the case. Again, representing the variance in the
20 facts from those defendants and this defendant.

21 Mr. Ulloa was, at the time of his release in CF
22 07-111, still heavily addicted to the methamphetamine
23 controlled substance and was unable to stay away from that
24 controlled substance. For that reason, as part of the
25 sentencing of this case, we would ask the Court to order the

1 defendant undergo the 12-month intensive drug treatment
2 program provided by BOP in order for him to learn to deal with
3 future possible incidences of addiction to controlled
4 substances. And I believe that he would benefit from the
5 treatment and we would ask the Court to impose that period.

6 The defendant is not going to ask the Court for
7 some greater leniency than the 87 months. It was the period
8 of time that he bargained for in his plea agreement with the
9 government. This was the recommendation that he asked for
10 while he, subsequent to having entered his guilty pleas, met
11 with the DEA and provided as much detailed information as he
12 could. He was not utilized for providing substantial
13 assistance after that; however -- and therefore, has not
14 gotten the benefit of a motion for substantial assistance
15 departure, but he was completely candid and provided to the
16 government information of all of his knowledge of drug
17 activities.

18 He has visibly changed in his appearance from the
19 time that he was arrested and confined. He has been in prison
20 now for almost a year and five months and he has visibly
21 changed in not only his appearance but in his behavior. And
22 he has -- he would like to address the Court and tell Your
23 Honor about how these circumstances have caused him to change.

24 The period of time that would be imposed under
25 the sentencing guidelines is not some insignificant amount of

1 time. And unlike offenders who are sentenced under the
2 sentencing guidelines and live in the mainland area of the
3 United States and are confined in a place which is fairly
4 close to their home and residence where they have the
5 opportunity to be visited with some frequency by loved ones,
6 Mr. Ulloa will be sentenced to the Court and sent a
7 considerable distance from his home. The chance that he'll
8 have the ability to have familial contact is going be
9 substantially diminished which is not a punishment envisioned
10 in the guidelines but is a reality of the circumstances of
11 this particular jurisdiction. And it's -- it is fairly
12 limited only to a small number of jurisdictions where this
13 circumstance occurs. Even in Hawaii now, they have a prison
14 facility there and people who are from Hawaii are imprisoned
15 there so that they have close proximity to their loved ones.

16 Unfortunately, for people who live in the
17 District of Guam and the District of Saipan and they don't
18 have that ability to have a close facility. And the cost of
19 air travel is so expensive it is prohibitive of loved ones
20 being able to go and visit with people that they love and care
21 for. It is the nurturing and love of family members which is
22 a very important part of the culture of the people who inhabit
23 Guam. And it is that love and affection which in many
24 instances has helped to guide people down the proper road of
25 being a good and productive citizen. Mr. Ulloa will have to

1 struggle without that ability. As long as he is sentenced to
2 a period of greater than twelve months, he is able to be
3 provided educational services and job training. A period of
4 87 months, even when the Court takes off the period of time
5 that he has served today and gives him credit for time served,
6 will still result in excess of four years of imprisonment that
7 he will serve, and so he will certainly have ample opportunity
8 to complete educational programs and job training within that
9 period of time. So imposing a sentence upon him as
10 recommended by the guidelines is not going to deprive him of
11 the ability to participate in those programs.

12 So again, one further concern mentioned by the
13 government is not an actual concern that won't be addressed by
14 a sentence imposed based upon the guidelines range. I ask
15 Your Honor to sentence Mr. Ulloa to the 87 months. It is what
16 he had hoped he would get and bargained for in the plea
17 agreement. He promptly entered his pleas to the Court. He
18 has accepted responsibility for his misdeeds, and I think that
19 the portion of the presentence report which addresses it shows
20 that he is extremely remorseful for his conduct. Mr. Ulloa
21 had a very significant relationship between himself and
22 Ms. Duenas. It is a very significant relationship to him,
23 probably the most significant relationship that he has had
24 outside of the relationship between him and his parents, which
25 has suffered as a result of this case. He probably is going

1 to find that that relationship won't be able to be resurrected
2 when his term of imprisonment is concluded. He wants to be
3 able to come back and participate in his children's lives, and
4 if the Court sentences him to the term envisioned by the
5 sentence guidelines, he will have an opportunity to do so. He
6 will receive good time credit if he is a good inmate in the
7 federal system. If he isn't, he will receive reduced good
8 time credits. I believe that the law takes into consideration
9 the effect of imprisonment, how it will benefit a defendant by
10 the good time credits.

11 So I think that all of the issues that the
12 sentencing court is supposed to take into consideration under
13 Section 3553 are addressed by the sentencing guidelines in
14 this case and by the circumstances of this case, even more so
15 because of his lack of -- his inability to have familial
16 contact.

17 I ask the Court to recommend to the Bureau of
18 Prisons that Mr. Ulloa be sentenced and incarcerated in a
19 facility on the West Coast so that in the event that family
20 members are able to afford to fly to see him, it will be at
21 minimum of what it is and could cost to fly to somewhere else
22 to the United States to see him. In any event, it will
23 certainly be a great cost, and that is my recommendation.
24 Thank you.

25 THE COURT: All right. Thank you. Mr. Ulloa,

1 did you wish to address the Court before I pronounce
2 sentencing? If you would come to the podium. Stand in front
3 of the microphone. Thank you.

4 THE DEFENDANT: Good morning, Your Honor.

5 THE COURT: Good morning.

6 THE DEFENDANT: I come before you this day to
7 respectfully ask for mercy and leniency. Before I begin, I
8 would like to say that though through my actions I may appear
9 as a bad person or father, I'm just the opposite. I believe
10 I'm a good person with a good heart and a good, caring and
11 loving father.

12 During that time I happened to get involved with
13 the wrong crowd. I recognize that my actions and my behavior
14 has made me a burden to society. For the past 16 months I
15 have been incarcerated, I realize that I brought much pain and
16 suffering to the people I love, especially my children. I
17 know that there is no one to blame for my incarceration except
18 myself. I have been reckless, irresponsible, a poor member of
19 the community and a drug addict, but that's no excuse. My
20 behavior, actions and troubled choices I made not only have
21 brought me down but everyone around me, most especially my
22 children. I regret so much of these things I've done, I'm so
23 very ashamed of it and I am so deeply sorry for my actions and
24 behavior and it pains me in my heart every day. I look back
25 and reflect on my life knowing that my children, who I'm so

1 very close with, has been without me for the past 16 months
2 and will continue to be without me for some more time that
3 lies ahead. It's very unbearable; however, out of the good
4 comes the bad -- I mean, out of the bad comes the good. I
5 have found a new relationship with God and a new relationship
6 with my family as well and I rely heavily on them both for
7 strength and guidance, gives me the will to move forward and
8 endure these trials and to face any obstacles that may come my
9 way.

10 On January 7, 2008, I hit the lowest point of my
11 life. It was then when I realized my actions and behavior not
12 only jeopardized my life but the people I care and love.
13 Since then, each and every day I reevaluate myself and my life
14 and think of more ways for improvement. I know I have been
15 wrong. I want so much the opportunity to make it right;
16 giving back rather than taking. I do take full responsibility
17 for my actions and I fully accept the consequences for them.
18 I believe it's the first step forward. And I only desire --
19 only desire and continue in doing so to better myself and my
20 life. I have no future plans or intentions on ever
21 endangering the welfare of my children, community or myself
22 again. I do believe that within the past 16 months of
23 incarceration, it has been a huge reality check and a rude
24 awakening teaching me to cherish and appreciate to the fullest
25 just what my children and life has to offer and mean to me. I

1 want and desire so much with my heart to better myself and
2 start fresh and new, becoming a whole new and better person
3 for my children and family and society. I humbly say again
4 that I sincerely apologize with all my heart and soul for my
5 actions and I respectfully ask and pray for mercy, forgiveness
6 and leniency. Thank you for your time.

7 THE COURT: Mr. Ulloa, the Court appreciates the
8 statements of -- the statement that you have made. It's not
9 often that a defendant will come to the court and realize and
10 accept full responsibility of their actions at the time of
11 sentencing. I mean fully accept responsibility.

12 As I reviewed this case and sentenced Christine
13 Duenas, the mother of your children, and looked at the other
14 defendants who are also involved, it's clear that you were the
15 head of the household of your children. That was your home
16 with Christine Duenas. And as the head of household, your
17 three children, who I believe are nine years old, five years
18 old and four years old at that time, approximately those ages,
19 those two other children, a teenager, you put them at serious
20 risk for, as you know, toxic inhalation, possibly -- and worse
21 yet, if they ever ingested the drugs that you and your
22 co-conspirators and co-defendants had manufactured at your
23 home, your children would have been at risk for death or even
24 serious injury. And I think you know that. You have
25 indicated that through your words today. And that to me is a

1 very, very serious breach of your duty to your children. It
2 seems to me that you understand that now. You seem very
3 remorseful. You have good family support. That's good. I
4 know that in a presentence report, your mother has taken
5 custody of the children; is that correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: So she still has custody of your
8 three kids?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Full custody. So that's very
11 important that your kids are with your family. But for
12 someone like yourself who had full custody, care and control
13 of your children and to put them at risk and have these drug
14 defendants, including yourself, manufacture drugs in your
15 home, I think, is probably the most serious breach of what you
16 have committed, in addition to having a firearm in your
17 possession. And then the Court has looked at your criminal
18 history. You're such a young man. You have two prior records
19 and then you have, as I understand it, two pending cases that
20 have not been finalized over at the Superior Court. So that
21 -- the Court also looks at that, your criminal history
22 category, then the Court looks at the extent of what was going
23 on in the -- in your home. There were -- as you know it, you
24 saw the presentence report, there was -- I think the most
25 compelling piece of evidence against you, in terms of putting

1 your children at risk, was when the police arrived at the
2 home, your children were sleeping in the master bedroom and
3 there was an acetone can on the floor in that same room that
4 shows that you were reckless, and you've admitted that now
5 that you were reckless in endangering your children and these
6 other children who were there.

7 You know, the Court believes that the sentence
8 has to fit the crime. The crime notes that the statement made
9 by Agent Churchin that you have -- you were given the
10 opportunity to cooperate and I suspect maybe you weren't
11 cooperating because you were still addicted -- I don't know
12 -- to the drugs, when you were given that initial opportunity.

13 The Court notes that with regard to your plea,
14 you have pled guilty to being a drug user in possession of a
15 firearm. That's a .45 caliber pistol. And you have pled
16 guilty to conspiring to manufacture a methamphetamine and I'm
17 also looking at the parody of sentencing between yourself,
18 Christine Duenas, the mother of your children, Jonathan Ninete
19 and then Johnnie Fortner who have already been sentenced by
20 the Court. The Court believes after having heard the
21 statements of counsel for the prosecution, your attorney's
22 statements, your remorseful remarks, and after having read the
23 presentence report submitted by Probation, the Court believes
24 that you should be committed to the Bureau of Prisons for a
25 sentence of 87 months and the three years of supervised

1 release in criminal case 7-111 and 87 months imprisonment and
2 four years of supervised release for 08-13; both cases to be
3 served concurrently. The Court will order a \$200 special
4 assessment for each count and that will be due immediately.
5 Do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Due to your financial situation, the
8 fine will be waived. As I said, supervised release for a term
9 of three years for Count 1 under CR 7-111 and for four years
10 supervised release for Count 1 CR 8-13 will be served
11 concurrently and you must comply with the following
12 conditions:

13 You shall not commit another federal, state or
14 local crime. Do you understand?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You must comply with the standard
17 conditions adopted by the Court. And you must not possess a
18 firearm or other dangerous weapon as defined by federal, state
19 or local law. Do you understand?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You must cooperate in the collection
22 of a DNA sample as directed by U.S. Probation and you must not
23 use or possess illegal controlled substances, you must submit
24 to one urinalysis test within 15 days of release from custody
25 and to two or more urinalysis not to exceed eight tests per

1 month. You must participate in a program approved by U.S.
2 Probation for substance abuse and the program shall include
3 testing to determine whether you have reverted to the use of
4 drugs or alcohol. You must make a co-payment for the program
5 at a rate to be determined by U.S. Probation. Do you
6 understand?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You shall perform 50 hours of
9 community service under the direction of U.S. Probation. In
10 addition, the Court will refer you to the -- is it 500 hours
11 of intensive drug treatment program?

12 PROBATION OFFICER: Yes.

13 THE COURT: I will make a judicial recommendation
14 to the Bureau of Prisons that you will be placed in prison
15 that has that program and then I will make a judicial
16 recommendation that you be sentenced to a facility on the West
17 Coast that has that particular program. I don't want -- and so
18 it could be California, Oregon, Washington, someplace along
19 the West Coast. But if they don't find it -- if there's none
20 available, then they'll look someplace else but that will be
21 the judicial recommendation.

22 Is there anything else that I might be missing,
23 Mr. Guilliot?

24 PROBATION OFFICER: We would just respectfully
25 request that no alcohol; no alcohol provision.

1 THE COURT: All right. The Court will also order
2 no alcohol. Do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Since you have an alcohol problem
5 with your priors. Okay. The Court finds that the sentence
6 imposed today takes into consideration all the factors even
7 those set forth in 3553(a) and achieves the general purpose of
8 sentencing including the consideration of the advisory non
9 binding sentencing guidelines.

10 The Court also notes that this sentence meets the
11 objectives of punishment and deterrence. You will be spending
12 seven years and -- 7.25 years away from your family. I hope
13 that you -- at this point you sound very positive about your
14 rehabilitation, you sound like you're on the road to recovery,
15 you just have to keep that up if you really want to come back
16 and be a productive member of this community and see your
17 children again and be a father to your children. I tell a lot
18 of defendants who come into my court, Mr. Ulloa, that it's
19 more important for their children to see their parents learn
20 from their mistakes and recover, and I'm sure all your
21 children are looking at you right now seeing how you handle
22 this.

23 In your plea agreement, you waived your right to
24 appeal your conviction, nevertheless you have the right to
25 appeal this sentence and judgment of this court. Your notice

1 of appeal must be filed within ten days of entry of judgment.
2 If you're unable to pay the cost of an appeal, you may apply
3 to file a free appeal. If you request, the clerk will prepare
4 and file a notice of appeal on your behalf. I'm also advising
5 you that if you can't afford an attorney to handle your
6 appeal, one will be appointed to represent you. Do you
7 understand?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Prosecution, did you wish
10 to dismiss the other counts in the indictment?

11 MS. SAN NICOLAS: Thank you, Your Honor. In
12 criminal case number 08-00013, we move to dismiss the
13 remaining counts, 2 and 3.

14 THE COURT: All right. Very well. So ordered.
15 All right. Mr. Van de veld, any reason why this sentence as
16 stated should not be imposed?

17 MR. VAN DE VELD: No, Your Honor. Did Your Honor
18 say credit for time served?

19 THE COURT: He will receive credit for time
20 served. I don't think I said that but the Court will order
21 that you receive credit for time served. And the Bureau of
22 Prisons, Mr. Ulloa, will calculate what exact time that is.
23 Do you have any questions?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: All right. Good luck to you.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: All right. Very well. Thank you.

3 MR. VAN DE VELD: Your Honor, there is one
4 matter, and that is, the defendant would like to know if he
5 can be released to reside with his mother during the pendency
6 of the designation of facility subject to electronic
7 monitoring and drug testing.

8 THE COURT: Prosecution?

9 MS. SAN NICOLAS: We'd object, Your Honor. The
10 reason, Your Honor, is that the defendant has been sentenced
11 by the Court, he faces substantial time. It can be reasonably
12 presumed that this would give the defendant incentive to flee.
13 The case involved the defendant posing a danger to his
14 children, to the community. We ask that the Court not release
15 this defendant pending a designation and we object to any
16 release, Your Honor.

17 THE COURT: Mr. Guilliot?

18 PROBATION OFFICER: We concur with the
19 government.

20 THE COURT: All right. The Court will deny the
21 request. I will allow of course Mr. Ulloa to have access to
22 his family for visitation, but because you face a substantial
23 period of time, Mr. Ulloa, and because you not only endangered
24 your children when you were manufacturing ice but you also
25 endangered the neighbors who lived in -- around your home, so

1 the Court believes that it's more prudent that you wait until
2 the Bureau of Prisons has designated your time while you are
3 at the facility -- detention facility. That will be the order
4 of the court. Thank you.

5 MR. VAN DE VELD: Thank you, Your Honor.

6 (Proceedings concluded at 11:17 a.m.)

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9 CERTIFICATE OF REPORTER

10
11 CITY OF HAGATNA)
12 TERRITORY OF GUAM) ss.
13)

14 I, Veronica F. Reilly, Official Court Reporter for
15 the District Court of Guam, do hereby certify the foregoing
16 pages 1 to 52, inclusive, to be a true and correct transcript
17 made of the digitally-recorded proceedings, to the best of my
18 ability, at the date and time therein set forth.

19 Dated this 29th day of May, 2012.

20
21 /s/Veronica F. Reilly
22 Veronica F. Reilly
23
24
25